IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.130 of 1993

Decided on : November 12, 2007

State of H.P. **…Appellant.**

Versus

Kaushalya Devi **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

For the Respondent : Mr. N.K. Thakur, Advocate.

Surjit Singh, Judge(Oral)

Respondent, who is the mother-in-law of deceased Nirmala Devi, was sent up for trial for offences punishable under Sections 306 and 498-A IPC, for allegedly abetting the commission of suicide by the deceased (Nirmala Devi), who was married to her son Kuldeep Singh about 1½ year prior to her death. The marriage of deceased Nirmala Devi had taken place with the son of the respondent in February, 1988. On 3rd August, 1989, Nirmala Devi consumed aluminum phosphide and ended her life. She was taken to a primary health centre where she was given some injections and then referred to Civil Hospital Hamirpur, where she was declared 'brought dead'.

2. Report was lodged with the Police by PW-2 Prito Devi, the mother of the deceased. It was alleged in the report that the respondent used to taunt the deceased by saying that she had not

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Whether reporters of the local papers may be allowed to see the judgment?

been given a television set in dowry even though her brother ran a shop of televisions and also that she was not well versed in household chores.

3. During the course of investigation, Police recorded the statement of a cousin of the deceased, namely Rajinder Singh (PW-3), who stated that about 20 days prior to the death of Nirmala Devi, he had gone to her matrimonial home, when she complained that the respondent had been grumbling that television set was not given in dowry and she did not know how to do the household work.

4. Trial Court charged the respondent with the offences punishable under Sections 306 and 498-A IPC and at the end of the trial acquitted her, holding that there was no evidence of cruelty or abetment to the commission of suicide by the deceased, against the respondent.

5. We have heard the learned Additional Advocate General and gone through the record.

6. Prosecution relied upon the testimony of PW-2 Prito Devi, the mother of the deceased and PW-3 Rajinder Singh, a cousin of the deceased, to prove the charge. Neither of the two witnesses testified that the deceased ever complained that she was subjected to cruelty, on account of the alleged demand for television set or her being unable to execute the household chores efficiently. Trial Court disbelieved the testimony of PW-2 Prito Devi, even about the alleged grumbling of the respondent, with the observation that to the Police vide her statement, under Section 154 of the Code of Criminal Procedure, with which she was duly confronted, she stated that the deceased told her about the alleged demand of television set only on 15th or 16th July, 1989, while in the witness-box as PW-2, she stated that the deceased had

complained to her about the aforesaid demand and criticism, by the respondent, during all the four visits, first of which was in April, 1988 and the last in August, 1989.

7. It is made out from prosecution's own evidence that the deceased was first taken to Ayurvedic Dispensary, Bijhar, where PW-8 Dr. Suresh Dhiman, attended upon her. A suggestion was thrown to this witness in the cross-examination that the deceased had made a statement that she had consumed aluminum phosphide in a fit of anger. He denied the suggestion. He was confronted with his statement, Ex. DA (portion A to A), wherein it is recorded that the deceased made such a statement and he recorded the statement of the deceased to the aforesaid effect. Defence then put a similar suggestion to the Investigating Officer of the case, namely PW-10 SI Sham Lal, who investigated the case and also recorded statement Ex. DA of Dr. Suresh Dhiman (PW-8). This witness admitted that PW-8 Dr. Suresh Dhiman told him that the deceased made a statement to him that she took the poison in a fit of anger and portion A to A of the statement of Dr. Suresh Dhiman had been correctly recorded by him. Not only this, the defence examined the Pradhan of the Panchayat, namely DW-1 Malkiat Singh, who accompanied the deceased to Ahurvedic Dispensary, Bijhar. The witness very categorically stated that at the said Dispensary the deceased made a statement to the doctor that she had consumed the poison in a fit of anger. The Investigating Officer, who appeared as PW-10 admitted that DW-1 Malkiat Singh was present at the Ayurvedic Dispensary, Bijhar, when the deceased was taken there after she poisoned herself.

8. Learned Additional Advocate General drew the attention of the court to the statement of the Investigating Officer, PW-10 SI

Sham Lal, wherein it is recorded that when he went to the spot, a large number of residents of the village had gathered and they were alleging that the respondent had tortured the deceased and argued that the said statement sufficiently proved that the deceased had been subjected to cruelty. The statement of PW-10 SI Sham Lal to the aforesaid effect is irrelevant and inadmissible. No witness from the village was examined by the prosecution to get it stated from him that the respondent subjected the deceased to cruelty. Not only this, the Investigating Officer also did not record the statement of any resident of the village to the aforesaid effect during the investigation of the case. This fact belies his aforesaid statement in the Court.

9. In view of the above stated position, we find no merit in the appeal. The same is, therefore, dismissed.

(Surjit Singh), J

November 12, 2007(sd) **(Surinder Singh), J**